IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

WP(C).No. 8030 of 2007(E)

AGAINST THE JUDGEMENT/ORDER IN CRRP.711/1999
CC.68/1996 of J.M.F.C.-II, HARIPAD

.....

PETITIONER:

S. MOHANKUMAR, S/O. SANKARAN
MOHANA BHAVANAM, NANGIARKULANGARA P.O.
HARIPAD, ALLEPPEY DIST.

BY ADV. SRI.T.K.MARTHANDAN UNNITHAN
SRI.V.JAYAKUMAR
SRI.T.D.PARAMESWARAN UNNI

RESPONDENTS:

---

1. K.S. RAJAN, S/O. K.P. SREEDHARAN
RAJ BHAVANAM, PILAPPUZHA, HARIPAD VILLAGE
KARTHIKAPPALLY TALUK, ALLEPPEY DIST.

2. THE STATE OF KERALA REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R2 BY GOVT. PLEADER SRI.S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO. 8030 OF 2007-E

Dated this the 9th day of March, 2007

JUDGMENT

The petitioner has been found guilty, convicted and sentenced in a prosecution under Sec.138 of the Negotiable Instruments Act. He faces the sentence of imprisonment till rising of court and to pay an amount of Rs.1,10,000/- as compensation and in default, to undergo simple imprisonment for a period of two months.

2. This Court, in revision, fixed two months period from 30/8/06 within which period the petitioner had to appear before the learned Magistrate.

3. The petitioner has appeared before the learned Magistrate. According to the petitioner, he has settled the dispute with the complainant and the complainant has compounded the offence allegedly committed by him. The entire amount of compensation has already been paid. But inasmuch as the compensation amount was not deposited and inasmuch as the payment was not reported to the learned

Magistrate within the period of two months stipulated by the court of revision, the petitioner apprehends that when he appears before the learned Magistrate, he may be remanded to custody by the learned Magistrate to undergo the default sentence. It is, in these circumstances, that the petitioner has come to this Court along with the complainant to report composition and to save him from the possibility of being compelled to undergo the default sentence.

4. That post revision composition can be accepted - it has been held in **Sabu George v. The Home Secretary and another** (2007 (1) KHC 903). But that is not to be done as a matter of course. This Court had resorted to that exercise in that case considering the nature of the sentence imposed. The accused in that case would have been compelled to undergo substantive sentence of imprisonment in prison notwithstanding the composition of the compoundable offence. In such an exceptional case, powers under Sec.482 of the Cr.P.C./Art.227 of the Constitution were invoked to quash the substantive sentence imposed to do justice and to avoid the consequence of the petitioner being compelled to undergo imprisonment in prison.

5. The instant case is not such a one. The petitioner has been sentenced to undergo imprisonment till rising of court only. The decision in **Girish v. Muthoot Capital Services (P) Ltd.,** (2007 (1) KLT 16) makes it clear that the mere fact that the amount has not been paid or deposited within the period stipulated will not oblige the accused to undergo imprisonment even when he is prepared to tender and pays the amount.

6. There was only a direction to pay the amount of compensation. There was no specific direction to deposit the amount. In these circumstances, if the petitioner and the complainant appear before the learned Magistrate and satisfy the learned Magistrate that the payment of the compensation amount has been effected, there can be no question of the learned Magistrate executing the default sentence.

7. In these circumstances, I find no reason to invoke the powers under Art.227 of the Constitution. This writ petition is, accordingly, dismissed; but with the observation that the petitioner and the complainant can appear before the learned Magistrate and satisfy the learned Magistrate that the compensation amount has been paid. If such amount has been

paid and the learned Magistrate is satisfied of the same, there can be no question of the default sentence being executed against the petitioner.

Sd/-

(R. BASANT, JUDGE)

HO
Nan/

//true copy//

P.S. to Judge